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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM [redacted] 1969

NO. 459

JAMES TERRELL KNIGHT,

Petitioner

V.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI

To The United States Court of Appeals
For The Fifth Circuit

JOSEPH H. DAVIS
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IN THE

SUPREME COURT OF THE UNITED STATES

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JAMES TERRELL KNIGHT,

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UNITED STATES OF AMERICA,

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PETITION FOR A WRIT OF CERTIORARI

To The United States Court of Appeals For The Fifth Circuit

Petitioner, James Terrell Knight, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the fifth Circuit entered in the above case on the 30th of June, 1969.

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit is unreported to date, but is reproduced in the appendix to this petition.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on the 30th of June, 1969. An extension was

granted by this Court until August 9, 1969, to file this petition. The jurisdiction of this Court is invoked under 28 USC 1254 (1).

QUESTION PRESENTED

Is there a duty resting upon United States Probation Officers to promptly bring to the attention of the sentencing court an alleged violation of probation by one under their supervision and, if so, does a breach of that duty preclude the use of such alleged violation after an unreasonable length of time as a basis for revocation of probation.

STATEMENT OF THE CASE

Petitioner was jointly convicted with Elmer Samuel Chapman for possessing raw materials, namely sugar, with the intent to use such in the illicit whiskey business in violation of the Internal Revenue Laws. Six days later the Chief Probation Officer of the district in which petitioner was convicted filed a petition to revoke a sentence of probation theretofore imposed upon petitioner some six years previously and which was to commence upon his release from penitentiary confinement relating to a separate case. The grounds for revocation were as follows:

(1) Petitioner had associated with known liquor law violators (i.e. Elmer Chapman);

(2) On 10-14-66 (some two years prior) petitioner had admitted that a truck containing 5,264 five-gallon plastic jugs were his property;

(3) Petitioner had been convicted for possession of raw materials (sugar) on October 25, 1968.

It was uncontested that petitioner had been convicted of the charge as alleged but petitioner in that case contended that

the search and seizure were illegal and such question is raised in his application for the writ of certiorari simultaneously filed in this Court with this application. The alleged association with Elmer Chapman is also involved in said other application for the writ of certiorari as the Elmer Chapman mentioned in the petition to revoke is one and the same as is jointly questioning said search and seizure in said related case filed in this Court. It was further shown during the probation revocation that petitioner was on conditional release from the United State Penitentiary at the time he admitted to possession of the said truck and said jugs and that a report of such possession had been furnished to the United States Pardon and Parole authorities as well as to the United States Attorney and also to a Probation Officer. The place of possession of said jugs was located within the Macon Division of the Middle District of Georgia, the district in which petitioner was initially sentenced to said probation.

It was also shown during said hearing that in September, 1967, a known major liquor violator was seen at petitioner's place of business at night in the presence of one who was known to have driven the truck containing the said jugs from the State of Maryland to the premises on which petitioner resided in a trailer adjacent to his mother.

The Court stated it found sufficient facts independent of the said truck and sugar as sufficient basis for revoking petitioner's probation. (R-35)

REASON FOR GRANTING THE WRIT

Should the search and seizure in the raw materials case be held unlawful then such ground, of necessity, could not be considered as a basis for revoking probation. Petitioner concedes that if such search and seizure is valid and the conviction is sustained, then reason exists for petitioner's probation to have been revoked.

However, if such conviction is reversed, then under the trial judge's findings of fact independently of said facts relating to the conviction, the use of the admission by petitioner of the said jugs being his property and its basis for revocation of probation becomes vitally important. We think it unquestionably appears from the record herein that the investigating officials of the United States as well as the prosecuting officials and the probation officials had knowledge of such for a period of time that can be reasonably shown to be from eighteen months to two years. Yet the record is clear that no action was taken during that period of time to either prosecute or to revoke the probation sentence imposed upon petitioner. Nor was any action taken insofar as his conditional release from Federal confinement was concerned. No adequate explanation appears in the record as to why no action was taken. The sentencing judge did make reference to same (R-33) but the inference is that the sentencing judge was not aware of the previous episode concerning the said jugs nor the reasons why no action was taken thereon.

Petitioner respectfully submits that the duty rests upon a probation officer to report any instances of conduct on the part of one under his supervision as would be in violation of the terms of probation. Indeed, the statutory provision as found in 18 USCA 3655 provides in substance that a probation officer shall keep informed concerning the conduct and condition of a probationer under his supervision and shall report thereon to the Court placing such person on probation.

It would appear that petitioner is seeking a determination of something that would be adverse to his interest. However, the failure of the probation officer to so take affirmative action insofar as said jugs and truck were concerned between the period October 14, 1966 and November 1, 1968, would appear to be a violation of the statutory duty imposed upon him, the breach of which would now preclude the use by such supervising pro-

bation official of such in a cumulative manner to institute revocation proceedings against petitioner. It would appear that the duty rested upon the probation official to so take action if he deemed it in violation of the terms of probation and absent such action, or his satisfactory explanation of why no action was taken, to be estopped from the use of such information at this time. The delay was therefore prejudicial to petitioner as it permitted the hearing court to have the cumulative effect presented, when standing alone, it might have been insufficient.

Petitioner concedes that probably in no area in the administration of criminal justice is more discretion vested in a sentencing judge than when the matter of a probation sentence is involved. However, upon an abuse of that discretion, the courts uniformly hold that the accused is entitled to relief.

Petitioner further concedes that the question here raised was not argued on his appeal to the United States Court of Appeals for the Fifth Circuit from the judgment revoking his probation. However, he here urges that the record bears out the factual statements herein made of knowledge on the part of the officials concerned of his activities with respect to such jugs during the period in question.

Petitioner does not urge that the time factor alone would justify the granting of the writ. The event did fall within the period of his probation and presumably within the statute of limitations. It is the time factor plus knowledge thereof on the part of the officials which petitioner relies upon and the non-action of the officials during that time. One can only speculate as to what might have happened but the fact is that the orderly and due administration of criminal justice would not appear to have been served by the actions herein complained of and consequently, that breach of statutory duty having occurred, such event should not now be used as an independent basis on which petitioner's probation was revoked.

CONCLUSION

For the foregoing reasons and in the interest of the fair administration of criminal justice at the trial level and particularly for the sake of promulgating guidelines for the use of personnel in the administration of the laws relating to probation and its revocation and to insure uniformity, the petition should be granted and the judgment below vacated, or in the alternative vacated and remanded with instructions as to the use of evidence of the event occurring in October, 1966, as a basis for revocation.

Respectfully submitted,

Joseph H. Davis
914 American Federal Building
Macon, Georgia 31201

CERTIFICATE OF SERVICE

I, Joseph H. Davis, do certify that I have on the date shown below served the within petition upon the United States Attorney, Middle District of Georgia, Macon Division, Macon, Georgia, Counsel of Record for adverse party, by mailing same to him at his post office address, Macon, Georgia, and also by air mail upon the Solicitor General, Department of Justice, Washington, D. C. 20530, with first class postage prepaid in each instance.

This 8 day of August, 1969.

Joseph H. Davis

APPENDIX

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 27001

Summary Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

JAMES TERRELL KNIGHT,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Georgia

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(June 30, 1969)

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.

PER CURIAM: This is an appeal from a revocation of probation. From the facts disclosed by the record we find the appeal to be without merit.[1] The revocation proceedings were

1. Pursuant to new Rule 18 of the Rules of this Court, we have concluded on the merits that this case is of such character as not to justify oral argument and have directed the Clerk to place the case on the Summary Calendar and to notify the parties in writing. See Murphy v. Houma Well Service, 5 Cir., 1969, ____ F. 2d ___, Part I (No. 26902, slip opinion dated March 11, 1969).

brought following the conviction of appellant and another for a misdemeanor in connection with nontax-paid distilled spirits.[2] Revocation of probation is a matter of judicial discretion. *Seymore v. Beto*, 5 Cir., 1967, 383 F. 2d 384. The only issue, therefore, is whether or not the trial court abused this discretion. *Broadus v. United States*, 5 Cir., 1963, 317 F. 2d 212, 213. We find no such abuse.

AFFIRMED.

2. See the opinion rendered this day in the matter of Elmer S. Chapman and James T. Knight v. United States of America, 5 Cir., 1969, ____ F. 2d ____ [Nos. 26992 and 27002] affirming the conviction of appellant and his codefendant.

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1968

No. 27001

D. C. Docket No. CR. 7901

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

JAMES TERRELL KNIGHT,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Georgia

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was taken under submission upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

June 30, 1969

Issued as Mandate: